



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 164

[Docket No. USCG-2015-0926]

RIN 1625-AC27

Tankers—Automatic Pilot Systems in Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to permit tankers with automatic pilot systems that meet certain international standards to operate using those systems in waters subject to the shipping safety fairway or traffic separation scheme controls specified in our regulations. The proposed amendments would remove an unnecessary regulatory restriction, update the technical requirements for automatic pilot systems, and promote the Coast Guard's maritime safety and stewardship (environmental protection) missions by enhancing maritime safety.

DATES: Comments and related material must be submitted to the online docket via <http://www.regulations.gov>, or reach the Docket Management Facility, on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-

0926 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

Viewing material proposed for incorporation by reference. Make arrangements to view this material by calling the person identified in the FOR FURTHER INFORMATION CONTACT section of this document.

FOR FURTHER INFORMATION CONTACT: For information about this document or to view material proposed for incorporation by reference call or e-mail LCDR Matthew J. Walter, CG-NAV-2, U.S. Coast Guard; telephone 202-372-1565, e-mail Matthew.J.Walter@uscg.mil.

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I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the January 17, 2008, issue of the *Federal Register* (73 FR 3316).

We are not planning to hold a public meeting but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate *Federal*

Register notice to announce the date, time, and location of such a meeting.

II. Abbreviations

BLS	Bureau of Labor Statistics
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
FR	<u>Federal Register</u>
IEC	International Electrotechnical Commission
IMO	International Maritime Organization
INS	Integrated navigation system
LOD	Letter of Deviation
OMB	Office of Management and Budget
RA	Regulatory Analysis
SBA	Small Business Administration
§	Section symbol
TSS	Traffic separation scheme
U.S.C.	United States Code

III. Basis and Purpose

The legal basis for this rulemaking is provided by 46 U.S.C. 2103 and 3703.

Section 2103 gives the Secretary of the department in which the Coast Guard is operating discretionary authority to “prescribe regulations to carry out the provisions of” 46 U.S.C. Subtitle II, which includes provisions for tanker carriage of liquid bulk dangerous cargoes. Section 3703 requires the Secretary to prescribe regulations for the operation, equipment, and other issues relating to the carriage of liquid bulk dangerous cargoes. In DHS Delegation No. 0170.1 (II)(70), (92.a), and (92.b), the Secretary delegated authority under these statutes to the Coast Guard.

The purpose of the proposed rule is to permit tankers with automatic pilot systems (autopilots, a generic term) that meet certain international standards to operate using those systems in waters subject to the shipping safety fairway or traffic separation scheme (TSS) controls specified in 33 CFR parts 166 and 167.

IV. Discussion of Proposed Rule

The proposed rule would amend 33 CFR 164.13, relating to the navigation of tankers underway. We promulgated § 164.13 in 1993.¹ Paragraph (d)(3) of the section prohibited a tanker's use of an autopilot in waters subject to 33 CFR part 166 shipping safety fairway² or 33 CFR part 167 TSS³ controls, but made an exception for an autopilot working in concert with an "integrated navigation system" (INS),⁴ as described in paragraph (e) of the section.

Immediately after we promulgated 33 CFR 164.13, we received a public comment noting that, at the time, "INS" described a wide range of shipboard systems for which there was no performance standard for the INS' accuracy, integrity, or reliability. Therefore, before § 164.13 was to take effect, we suspended paragraph (e)⁵ until such time as we could develop the testing and methodology necessary for certifying that an INS has satisfactory accuracy, integrity, and reliability. The 1993 suspension was noted in an editor's note to 33 CFR 164.13.⁶ The suspension had the effect of prohibiting the use of any autopilot in fairway or TSS waters.

Section 164.13(e) provided three criteria for showing that an INS can adequately

¹ 58 FR 27633 (May 10, 1993).

² A fairway is defined by 33 CFR 166.105(a) as "a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted." Part 166 lists the U.S. waters subject to fairway controls.

³ A TSS is defined by 33 CFR 167.5(b) as "a designated routing measure which is aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes." Part 167 lists the U.S. waters subject to TSS controls.

⁴ "The purpose of an integrated navigation system...is to provide 'added value' to the functions and information needed by the officer in charge of the navigational watch...to plan, monitor or control the progress of the ship." MSC.86(70) Annex 3, para. 1.

⁵ 58 FR 36141 (Jul. 6, 1993).

⁶ The note was inadvertently deleted in 1996, creating some industry confusion as to whether the suspension remained in effect. Some tanker owners and operators proceeded to install and operate INSs in TSS or fairway waters. The Coast Guard issued Marine Safety Information Bulletin 10/13 (Feb. 2013) to remind owner and operators that the suspension remained in effect. The editor's note was restored to the CFR in 2013.

control a tanker. The system must show that it:

1. Can maintain a predetermined trackline with a crosstrack error of less than 10 meters 95 percent of the time;
2. Can provide continuous position data accurate to within 20 meters 95 percent of the time; and
3. Has immediate override control.

Today, Criterion 2 is easily met by any tanker with a modern global navigation satellite system, and Criterion 3 is met by all systems now on the market.

Criterion 1, the ability to maintain a predetermined trackline with high accuracy, has benefited from advances in autopilot technology since 1993, in particular the advent of heading control systems,⁷ track control systems,⁸ or integrated navigation systems.⁹ The International Electrotechnical Commission (IEC), a voluntary industry consensus standards-setting body, has developed a standard for heading and track control systems. The International Maritime Organization (IMO) has adopted resolutions endorsing this standard and has recommended to IMO member states that they adopt performance standards “not inferior to”¹⁰ those the IMO has adopted. We believe that tanker autopilot systems meeting the IEC standard should be relieved of the regulatory burden that prohibits their use in fairway and TSS waters.

⁷ A heading control system, “in conjunction with its source of heading information, should enable a ship to keep a preset heading with minimum operation of the ship’s steering gear.” IMO Resolution MSC.64 (67), Annex 3, para. 2.1.

⁸ “Track control systems in conjunction with their sources of position, heading and speed information are intended to keep a ship automatically on a pre-planned track over ground under various conditions and within the limits related to the ship’s maneuverability. A track control system may additionally include heading control.” IMO Resolution MSC.74(69) Annex 2, para. 1.

⁹ “An INS is a combination of systems that are interconnected to increase safe and efficient navigation by suitably qualified personnel.” IMO Resolution MSC.86(70), Annex 3, para. 3.3. An INS incorporates either a heading or track control system.

¹⁰ IMO Resolution MSC.86(70), para. 3 (Dec. 8, 1998). Resolution MSC.86(70) applies to INS systems installed on or after Jan. 1, 2000. Resolution MSC.252(83) uses identical “not inferior to” language in recommending measures applicable to INS systems installed on or after Jan. 1, 2011.

Since late 2013, we have relieved the existing regulatory burden on many tanker owners and operators by authorizing, on a case-by-case basis and in specific Coast Guard Captain of the Port (COTP) zones, deviations¹¹ from the § 164.13(d)(3) prohibition on a tanker's use of an autopilot. To date, we have authorized 35 deviations allowing tankers to operate specific IEC-compliant autopilots in fairway or TSS waters within specific COTP zones. However, the authorization of deviations does not relieve the regulatory burden for those who do not apply for authorization, and what relief we do provide comes at the expense of new burdens on industry and the Coast Guard. First, a tanker owner or operator must apply for a deviation in each COTP zone in which the tanker operates. Second, the cognizant COTP must ensure that the tanker's autopilot is IEC-compliant, and then authorize the deviation.

We would like to eliminate all these burdens on industry and the Coast Guard. Given that the apparent lack of standards in 1993 has now been remedied, we propose amending 33 CFR 164.13 to allow tankers equipped with specific IEC-compliant autopilots to use those systems in fairway and TSS waters, without having to apply to individual COTPs for deviations, and without the need for COTPs to ensure IEC compliance and issue deviations. Not only will this eliminate the current burdens on industry and the Coast Guard by giving force to IMO resolutions, it will also promote both the United States' leading role in IMO affairs, and the goals of Executive Order 13609, "Promoting International Regulatory Cooperation."¹² Moreover, our proposal could enhance maritime safety, because the autopilots in question offer far greater

¹¹ Under 33 CFR 164.55. Deviations are authorized by letters of deviation issued by the cognizant COTP.

¹² 77 FR 26413 (May 4, 2013).

precision and navigational safety than conventional autopilots, and arguably, even human steering.

For these reasons, we propose amending 33 CFR 164.13(d), incorporating the existing substance of paragraph (d) and suspended paragraph (e) with the substantive changes we will describe, and also with nonsubstantive wording changes that are intended to improve § 164.13's clarity. Except as noted, those nonsubstantive changes are minor.

In the introductory language in (d), we would make it clear that the paragraph preempts (makes invalid) State or local laws intended to regulate the same topic. Also, instead of the generic term “autopilot,” we would specify that (d) authorizes the use of only a heading or track control system.

In paragraph (d)(1), we would retain the existing § 164.13(d)(3)(iii) and (iv) prohibitions against using a track or heading control system within a half nautical mile of shore or within any anchorage ground specified in 33 CFR part 110.

In paragraph (d)(2), we would retain, but substantially revise for clarity, the existing § 164.13(d)(2) requirement for the full-time presence of a qualified person to assume manual control of the tanker's steerage.

In paragraph (d)(3), we would replace the existing § 164.13(d)(1) reference to an IMO autopilot compliance standard with a reference to two editions of the IEC standard for heading and track control systems.

We would remove existing suspended paragraph (e). As revised, paragraph (d) would replace the substance of that paragraph by setting new requirements for the use of heading or track control systems in fairway or TSS waters.

V. Incorporation by Reference

Material proposed for incorporation by reference in 33 CFR 164.13 appears in the proposed amendment to 33 CFR 164.03. See ADDRESSES for information on viewing this material. Copies of the material are available from the sources listed in § 164.03. Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference. We propose incorporating the International Electrotechnical Commission standard IEC 62065, Edition 1.0 (2002-03) and Edition 2.0 (2014-02). Both editions of this standard specify operational and performance requirements and tests for heading and track control systems.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule

is not a “significant regulatory action,” under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

A combined preliminary regulatory action (RA) and Threshold Regulatory Flexibility Analysis follows and provides an evaluation of the economic impacts associated with this proposed rule. The table which follows provides a summary of the proposed rule’s costs and benefits.

Table 1: Summary of the Proposal’s Impacts

Category	Summary
Potentially Affected Population	An estimated 9,458 foreign-flagged vessels that are owned by 2,285 companies and 95 U.S.-flagged vessels that are owned by 40 businesses.
Costs (7% discount rate) (costs only accrue in the first year)	\$12,403
10-Year Total Quantified Cost Savings (7% discount rate)	\$85,220
10-Year Net Cost Savings (7% discount rate)	\$72,816
Annualized Net Savings (7% discount rate)	\$10,367
Unquantified Benefits	* Improve effectiveness without compromising safety. * Prevent misuse and misunderstandings. * Improved goodwill between regulated public and Coast Guard.

The proposed rule would revise the existing regulations regarding navigation on tankers. It would update the regulations to lift the suspension on tanker use of autopilot systems that has been in place since 1993 and which is no longer needed and update the performance standard for traditional autopilot systems referenced in 33 CFR 164.13(d). The proposed rule, if finalized, would remove an unnecessary regulatory restriction and result in an overall cost savings for the regulated public and the Coast Guard.

Affected Population

Based on the Coast Guard’s MISLE database, we estimate that this proposed rule would affect approximately 9,458 foreign-flagged vessels and approximately 95 U.S.-

flagged vessels. No governmental jurisdictions would be impacted.

Costs

The Coast Guard expects that this rule, if promulgated, would result in one-time costs of approximately \$12,403 (7% discount) or an undiscounted cost of \$13,272.¹³

These costs would be derived by regulated entities needing to communicate to their vessel staff information about the proposed change (a regulatory familiarization cost).

The Coast Guard estimates that approximately 4 minutes (0.067 hour) would be expended per company to do so; these communications are anticipated to be via electronic bulletin boards or mass distribution e-mail. Labor costs are estimated at \$85.20 per hour (fully loaded to account for the cost of employee benefits) for an operations manager based on a mean wage rate of \$55.81; this estimate is based on Bureau of Labor Statistics (BLS) Occupational Employment Statistics, Occupational Employment and Wages data, for General and Operations Managers for Industrial Production (11-1021, May 2013).¹⁴ From there, we applied a load factor of 1.53, to determine the actual cost of employment to employers and industry.¹⁵ The following table presents the estimated cost of compliance with the rulemaking.

¹³ As derived by the summation of the equations: $[0.067 \text{ hour} * \$85.20 \text{ marine operations manager wage rate} * (2,285 \text{ foreign-flagged vessel owner/operators} + 40 \text{ U.S.-flagged vessel owner/operators})] * 7\% \text{ discount rate}$.

¹⁴ The reader may review the source data at <http://www.bls.gov/oes/2013/may/oes111021.htm>. Also please see <http://www.bls.gov/oes/2013/may/oes436014.htm> for the wage rate for an administrative assistant. After adding the load factor the wage rate for an administrative assistant is estimated to be \$24.96. The wage rate for a lead engineer is estimated to be \$100.22, which is derived from the product of the unloaded wage rate as found on the BLS website (<http://www.bls.gov/oes/2013/may/oes119041.htm>) and the load factor (1.53 rounded).

¹⁵ This load factor is calculated specifically for production, transportation and material moving occupations, Full-time, Private Industry (Series ID: CMU2010000520000D, CMU2010000520000P and CMU2020000520000D, CMU2020000520000P), 2014, 4th Quarter. Total cost of compensation per hour worked: \$27.31, of which \$17.89 is wages, resulting in a load factor of 1.526551 ($\$27.31/\17.89). USCG rounded this factor to 1.53 (rounded to the nearest hundredth). (Source: <http://www.bls.gov/ncs/ect/data.htm> as accessed on March 18, 2015. Using similar applicable industry groups and time periods results in the same estimate of load factor.

Table 2: Total Estimated Cost of Regulatory Familiarization

	Discounted 7%	Discounted 3%	Undiscounted
Year 1	\$12,403	\$12,885	\$13,272
Year 2	\$0	\$0	\$0
Year 3	\$0	\$0	\$0
Year 4	\$0	\$0	\$0
Year 5	\$0	\$0	\$0
Year 6	\$0	\$0	\$0
Year 7	\$0	\$0	\$0
Year 8	\$0	\$0	\$0
Year 9	\$0	\$0	\$0
Year 10	\$0	\$0	\$0
Total	\$12,403	\$12,885	\$13,272
Annualized	\$1,766	\$1,511	\$1,327

The Coast Guard has not estimated a cost to comply with the documents proposed to be incorporated by reference (International Electrotechnical Commission's standards IEC 62065, 2014-02; IMO Resolution MSC.74(69), Annex 2.) The Coast Guard has not estimated a cost for these provisions because manufacturers participate in the development of the standards at IEC and are aware of the changes to standards. As a result they already have been producing equipment to meet the standard; manufacturers typically will begin to make manufacturing modifications even before such changes are formally adopted. The proposal would not require owners and operators to acquire the standards; they would not need the standard in hand to be in compliance. They simply would look for evidence from manufacturers that products meet or exceed the standard before purchase. For these reasons, the Coast Guard has not included a cost for these provisions.

No equipment would be required by the rule. As well, some parts of the affected population would experience no cost increase due to the rulemaking, since some vessels do not use autopilot under the conditions noted in the proposal; therefore they would have

no costs. No further action would be required by these parties. Only 40 U.S. vessel owners and operators and approximately 2,285 foreign vessel owners and operators are potentially impacted; for these, they would incur a cost only if they need to communicate to staff the proposed rules changes on the use of autopilot.

Cost Savings

The proposal would result in cost savings for the regulated public and the Coast Guard. The proposed rule would prevent unnecessary inquiries to the Coast Guard regarding regulations and the filing of (and Coast Guard processing of) letters of deviation (LODs). With regard to the first cost savings, the Coast Guard estimates that it spends a collective 20 hours annually (one hour per call on average) fielding calls from the regulated public seeking clarification of the intent of the existing regulations. This labor cost for the regulated public and the Coast Guard would be eliminated by the proposed rule.¹⁶ To estimate these costs, the Coast Guard used publicly available data as found in the Memorandum of the Commandant entitled “Coast Guard Reimbursable Standard Rates.”¹⁷ Labor costs are estimated for the Coast Guard at \$88¹⁸ for a Lieutenant Commander. This figure represents a wage rate with a fully loaded labor factor of 1.85 for uniformed Coast Guard positions. For the regulated public, the wage rate for a lead engineer is estimated to be \$100.22 per hour, based upon a load factor applied to the BLS wage data; the unloaded wage rate for an engineering manager is

¹⁶ 20 hours annually * wage rate for lead engineer. The Government’s cost is estimated by the equation 20 hours annually * wage rate for Coast Guard Lieutenant Commander (O-4)

¹⁷ The memorandum is dated February 11, 2015 and is numbered COMDTINST 7310.1P. Enclosure 2 lists the relevant data. The memorandum may be found on www.uscg.mil/directives/ci/7000-7999/CI_7310_1p.PDF. *This document is known as Commandant Instruction P.*

¹⁸ See http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1p.PDF, See Enclosure 2 for in-government rate of an O-4 officer and a GS-11 employee.

\$65.65 and the load factor is 1.53 (rounded).¹⁹ The total cost savings from the elimination of inquiries to Coast Guard is estimated at \$3,764 per year.²⁰

In addition, the proposal would save the regulated public and the Coast Guard labor costs associated with the filing and processing of annual LODs. The proposal would preclude the need for the regulated public to file an LOD. In doing so, it would preclude the need for the Coast Guard to process the LOD and respond to it. The Coast Guard estimates that each LOD requires a given marine business to expend 1.7 hours of an operations manager's time and 0.5 hour of an administrative assistant's time to prepare and submit the LOD. These precluded costs would be incurred annually and would be calculated by the sum of the products of the loaded wage rates and labor duration estimates times the number of requests per year.²¹ In turn, we estimate that the Coast Guard would spend 0.6 hour of a Lieutenant Commander's time; and 0.5 of an administrative assistant's time to process, review and respond to each LOD request. The loaded wage rates for these positions are: \$88 for a Lieutenant Commander (O-4); \$58 for an administrative assistant (GS-11). These wage rates may be found in Commandant Instruction P (Enclosure 2's in-government rates).

To estimate these cost savings, we requested data from Coast Guard sectors on their experience with processing LODs. Based on that review, we estimated the number of LOD requests to be approximately 35 annually, which would be precluded by the proposed rule. We also reviewed previous Coast Guard regulatory analyses for the labor

¹⁹ This is the wage rate for 11-9041 Architectural and Engineering Managers as found at <http://www.bls.gov/oes/2013/may/oes119041.htm> and as accessed on February 12, 2015. As noted earlier, a load factor of 1.53 was applied.

²⁰ Coast Guard Cost Savings: (\$88 Lt Commander * 1 hour * 20 calls per year = \$1760) Regulated Public Cost Savings: (\$100.22 lead engineer * 1 hour * 20 calls per year = \$2004).

²¹ (\$85.20/hour operations manager's wage rate * 1.7 hours) + (\$24.96/hour admin assistant's wage rate * 0.5 hour) * (35 submissions) Wage data may be found from the US Bureau of Labor Statistics (<http://www.bls.gov/oes/2013/may/oes111021.htm> and <http://www.bls.gov/oes/2013/may/oes436014.htm>).

costs of the regulated public for filing waiver requests. Our estimated durations for labor for the regulated public and for the Coast Guard are based on Coast Guard experience with LOD requests as well as an existing information collection, which is entitled Ports and Waterways Safety – Title 33 CFR Subchapter P (RIN 1625-0043; the Coast Guard’s proposed rule for cranes (RIN 1625-AB78, USCG-2011-0992); and the proposed and final rules for Vapor Control Systems (RIN 1625-AB37, USCG-1999-5150). We used the existing information collection 1625-0043 to obtain the estimates of existing tasks; we used the information collections for cranes and vapor control systems to estimate tasks that were not in 1625-0043, but were similar to the tasks of these information collections. We estimate that the regulated public would spend approximately 2.2 hours to prepare the paperwork and to file an LOD.²² In addition, we estimate that the Coast Guard spends 1.1 hours in total for each LOD.²³

Total cost savings per year would be \$12,133.²⁴ The following table presents the estimated cost savings.

²² 35 waivers annually * [1.7 hours * wage rate for operations manager + 0.5 hour * wage rate for an admin assistant].

²³ 35 waivers annually * [0.6 hour * wage rate for Lt. Commander + 0.5 hour * wage rate for Coast Guard admin assistant].

²⁴ \$4,623 in Government cost savings plus \$7,510 in regulated public cost savings.

Table 3: Total Cost Savings by Year

	Cost Savings to the Regulated Public			Cost Savings to the Government			Total Estimated Cost Savings		
Year	Annualized 7%	Annualized 3%	Undiscounted	Annualized 7%	Annualized 3%	Undiscounted	Annualized 7%	Annualized 3%	Undiscounted
1	-\$7,019	-\$7,292	-\$7,510	-\$4,321	-\$4,488	-\$4,623	-\$11,340	-\$11,780	-\$12,133
2	-\$6,560	-\$7,079	-\$7,510	-\$4,038	-\$4,358	-\$4,623	-\$10,598	-\$11,437	-\$12,133
3	-\$6,131	-\$6,873	-\$7,510	-\$3,774	-\$4,231	-\$4,623	-\$9,904	-\$11,104	-\$12,133
4	-\$5,730	-\$6,673	-\$7,510	-\$3,527	-\$4,107	-\$4,623	-\$9,256	-\$10,780	-\$12,133
5	-\$5,355	-\$6,478	-\$7,510	-\$3,296	-\$3,988	-\$4,623	-\$8,651	-\$10,466	-\$12,133
6	-\$5,004	-\$6,290	-\$7,510	-\$3,081	-\$3,872	-\$4,623	-\$8,085	-\$10,161	-\$12,133
7	-\$4,677	-\$6,107	-\$7,510	-\$2,879	-\$3,759	-\$4,623	-\$7,556	-\$9,866	-\$12,133
8	-\$4,371	-\$5,929	-\$7,510	-\$2,691	-\$3,649	-\$4,623	-\$7,062	-\$9,578	-\$12,133
9	-\$4,085	-\$5,756	-\$7,510	-\$2,515	-\$3,543	-\$4,623	-\$6,600	-\$9,299	-\$12,133
10	-\$3,818	-\$5,588	-\$7,510	-\$2,350	-\$3,440	-\$4,623	-\$6,168	-\$9,028	-\$12,133
10-Year	-\$52,750	-\$64,065	-\$75,104	-\$32,470	-\$39,435	-\$46,230	-\$85,220	-\$103,500	-\$121,334
Annualized	-\$7,510	-\$7,510		-\$4,623	-\$4,623		-\$12,133	-\$12,133	

The proposed rule would result in a net cost savings of \$72,816 (7% discount rate for a 10 year period) since the estimated cost savings exceed the costs of the proposed rule. Costs are incurred only in year 1. The net cost savings of the proposal are calculated by subtracting the total cost of the rule (\$12,403) from the total cost savings (\$85,220). These cost savings result from precluded labor costs to the regulated public and to the Coast Guard as noted earlier. Table 4 presents the cost savings of the proposal.

Table 4: Estimated Net Cost Savings

	Discounted 7%	Discounted 3%	Undiscounted
Year 1	\$1,064	\$1,105	\$1,138
Year 2	-\$10,598	-\$11,437	-\$12,133
Year 3	-\$9,904	-\$11,104	-\$12,133
Year 4	-\$9,256	-\$10,780	-\$12,133
Year 5	-\$8,651	-\$10,466	-\$12,133
Year 6	-\$8,085	-\$10,161	-\$12,133
Year 7	-\$7,556	-\$9,866	-\$12,133
Year 8	-\$7,062	-\$9,578	-\$12,133
Year 9	-\$6,600	-\$9,299	-\$12,133
Year 10	-\$6,168	-\$9,028	-\$12,133
Total	-\$72,816	-\$90,615	-\$108,062
Annualized	-\$10,367	-\$10,623	-\$10,806

Benefits

The proposed rule would amend existing regulations to remove the requirements that prohibit tanker use of autopilot systems. The proposal also would update the performance standard for traditional autopilot systems. The Coast Guard is pursuing this amendment to existing standards in order to prevent inefficient use of labor and to add clarity to the current system; the proposal would prevent inefficient use of labor (as noted in the cost savings discussion earlier) and would add clarity to the regulated public as to the need for safety precautions. The proposed changes would improve regulatory intent

and keep regulations in step with existing technology without compromising the existing level of safety. Instead, the proposed rule would promote maritime safety by eliminating confusion associated with outdated regulations that have not kept pace with technology.

Regulatory Alternatives Considered

In developing the proposal, the Coast Guard considered the following alternatives when developing the proposed rule:

1. Take no action.
2. Develop a different time table for small entities.
3. Provide an exemption for small entities (from the proposed rule or any part thereof).

The first alternative is not preferred because it does not offer solutions to issues identified earlier in the preamble. It would perpetuate an inefficient use of labor on the part of the regulated public and the Coast Guard. The second alternative prevents small entities from benefiting from the efficiencies made possible by this regulation as soon as the larger companies, while the third alternative would prevent small entities from enjoying the benefits of these efficiencies at all. As this regulation reduces an unnecessary regulatory restriction, the Coast Guard does not want to restrict its applicability to small entities in any way.

Most entities are expected to experience no additional cost; for those who would incur a cost, the Coast Guard estimates costs to be less than \$6 per entity.²⁵ Cost savings would accrue only to those covered by the rulemaking and who have not already applied for a waiver or who are not in compliance with the existing regulations. An exemption

²⁵ As noted earlier, the cost to communicate information is calculated by the equation \$85.20 wage rate * 0.067 hour.

would preclude cost savings to those under the exemption; the Coast Guard estimates that cost savings would be less than \$200 per affected entity annually.²⁶

For the reasons discussed earlier, we rejected these alternatives in favor of the preferred alternative. The preferred alternative (the proposed rule) would amend existing regulations to remove the requirements that prohibit tanker use of autopilot systems. The preferred alternative also would update the performance standard for traditional autopilot systems.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

The Coast Guard expects that this proposed rule would not have a significant economic impact on small entities. As described in the "Regulatory Planning and Review" section, the Coast Guard expects this proposed rule to result in net cost savings to regulated entities. An estimated 67 percent of the regulated companies (a total of 27 businesses) are considered small by the Small Business Administration (SBA) industry size standards; for any company for which we were not able to find SBA size data, we assumed it was a small entity. The compliance costs for this proposed rule (which are only regulatory familiarization costs) would amount to less than 1 percent of revenue for all small entities (\$5.71 per entity) and, therefore, do not represent a significant economic

²⁶ Labor to make an inquiry is estimated by the equation: 1.7 hours * wage rate for operations manager + 0.5 hour * wage rate for an admin assistant.

impact on a substantial number of small entities. Costs would be incurred only in the first year of the final rule's enactment. No additional costs for labor or equipment would be incurred in future years. In fact, as this rule is removing an unnecessary regulatory restriction, this rule is expected to reduce labor costs. No small governmental jurisdictions are impacted by the proposed rule.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would affect it economically.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard (see ADDRESSES). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520; the proposed rule would not add requirements for recording and recordkeeping to the existing collection which is entitled Ports and Waterways Safety – Title 33 CFR Subchapter P and which is numbered 1625-0043. However, the proposed rule would adjust this collection. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The proposed rule would not require additional tasks by the regulated public but would eliminate the need for the regulated public to file LODs under conditions as specified by the proposed rule. The Coast Guard estimates that there would be 35 fewer LODs filed annually because of the proposed rule's changes.

The existing collection of information requires LODs to be submitted to the Coast Guard for various reasons; one of which is for tankers to use autopilot under conditions noted in the proposal. Under the proposed rule, Coast Guard would no longer require an LOD for tankers as specified in the proposal. The proposal would preclude the need for 35 or fewer LODs annually to be submitted to the Coast Guard for approval. It also would preclude the need for the Coast Guard to process and approve those LODs. The

collection of information aids the regulated public in assuring safe practices; however, the Coast Guard has concluded that this particular use of LODs is no longer warranted.

This proposed rule would amend an existing collection of information as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520); the rule removes regulatory requirements which necessitate the filing of LODs under conditions as specified in the proposed rule. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for gathering and maintaining the data needed, and completing and reviewing the collection.

TITLE: Ports and Waterways Safety – Title 33 CFR Subchapter P.

OMB CONTROL NUMBER: 1625-0043.

SUMMARY OF THE COLLECTION OF INFORMATION: The existing collection of information requires written responses such as LODs. Under the proposed rule, the Coast Guard would no longer require an LOD to be submitted under specific conditions as noted in the proposal; LODs would continue to be required for other existing reasons. The collection of information aids the regulated public in assuring safe practices.

NEED FOR INFORMATION: The Coast Guard needs this information to determine whether an entity meets the regulatory requirements.

PROPOSED USE OF INFORMATION: The Coast Guard uses this information to determine whether an entity request for deviation is justified.

DESCRIPTION OF THE RESPONDENTS: The respondents are owners and operators of vessels which travel in the regulated waterways as noted in the regulatory text.

NUMBER OF RESPONDENTS: The burden of this proposed rule for this collection of information includes submittal of LODs. This collection of information applies to owners/operators of vessels which travel in the regulated waterways. We estimate the maximum number of respondents is 35 per year.

FREQUENCY OF RESPONSES: Letters of Deviation under the conditions noted in the proposal are filed once per year. The proposal would eliminate the need for this particular use of the LOD. The Coast Guard estimates that 35 fewer LODs would be filed annually because of the proposal.

BURDEN OF RESPONSE: The burden of response for each LOD is an estimated 2.2 hours.

ESTIMATE OF TOTAL ANNUAL BURDEN: This proposed rule would decrease burden hours by 77 hours from the previously approved burden estimate of 2,110.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We invite public comment on the proposed collection of information. Advise us on how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the

quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132. Our analysis is explained below.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of United States v. Locke and Intertanko v. Locke, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). This rule is promulgated under Title II of the Ports and Waterways

Safety Act²⁷ (46 U.S.C. § 3703) and amends existing regulations for tank vessels regarding certain vessel equipment technical standards and operation. Under the principles discussed in *Locke*, States are foreclosed from regulating within this field. Thus, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under E.O. 13132, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

²⁷ Pub. L. 92-340, 86 Stat. 424, as amended; codified at 33 U.S.C. §§ 1221 *et seq.* 1232.

This proposed rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Tribal Governments

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Tribal governments, on the relationship between the Federal Government and Tribal governments, or on the distribution of power and responsibilities between the Federal Government and Tribal governments.

K. Energy Effects

We have analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under E.O. 13211 because it is not a

“significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule uses voluntary consensus standards to track control and integrated navigation systems used in vessel automatic pilot systems. These standards provide parameters within which these systems must operate to ensure proper navigational control given the vessel’s position, heading, speed, and other factors. The standards were developed by the International Electrotechnical Commission, an international voluntary consensus standards-setting organization, and the IMO.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f, and we have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting

this categorical exclusion determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

This proposed rule involves regulations concerning tank vessel equipment approval and operation. Thus, this proposed rule will likely be categorically excluded under Section 2.b.2, figure 2-1, paragraph 34 (d), (e), and (i) of the Instruction and Section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 164

Marine, Navigation (water), Incorporation by reference, Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 164 as follows:

Title 33—Navigation and Navigable Waters

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; and E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.46 also issued under 46 U.S.C. 70114 and Sec. 102 of Pub. L. 107-295. Sec. 164.61 also issued under 46 U.S.C. 6101. The Secretary's authority under these sections is delegated to the Coast Guard by Department of Homeland Security Delegation No. 0170.1, para. II (70), (92.a), (92.b), (92.d), (92.f), and (97.j).

2. Amend § 164.03 by adding paragraph (h) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(h) International Electrotechnical Commission (IEC), 3, rue de Varembe,
Geneva, Switzerland, +41 22 919 02 11, <http://www.iec.ch/>.

(1) IEC 62065 Edition 1.0 (2002-03), Maritime navigation and
radiocommunications equipment and systems – Track control systems – Operational and
performance requirements, methods of testing and required test results– incorporation by
reference approved for § 164.13(d).

(2) IEC 62065 Edition 2.0 (2014-02), Maritime navigation and
radiocommunications equipment and systems – Track control systems – Operational and
performance requirements, methods of testing and required test results– incorporation by
reference approved for § 164.13(d).

3. Amend § 164.13 by removing paragraph (e) and revising paragraph (d) to read
as follows:

§ 164.13 Navigation underway: Tankers.

* * * * *

(d) This paragraph (d) has preemptive effect over State or local regulation within
the same field. A tanker may navigate using a heading or track control system only if—

(1) The tanker is beyond one-half nautical mile off shore or not within waters
specified in 33 CFR part 110 (anchorage);

(2) There is a person, competent to steer the vessel, present to assume manual control of the steering station; and

(3) The system meets the heading or track control specifications of either IEC 62065 (2002:03) or IEC 62065 (2014:02) (incorporated by reference, see § 164.03).

Dated: June 28, 2016

David C. Barata,
Acting Director of Marine Transportation Systems Management,
U.S. Coast Guard.
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